

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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PRUDENTIAL INVESTMENT  
MANAGEMENT SERVICES LLC,  
and PRUDENTIAL BANK & TRUST,  
FSB,

Plaintiffs,

—against—

MICHAEL J. FORDE, MARY JANE  
FORDE, THE NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS  
ANNUITY FUND, FRANK G.  
SPENCER, JOHN BALLANTYNE,  
DOUGLAS J. MCCARRON, PAUL  
TYZNAR, BRYAN M. WINTER, JOHN  
DEOLLLIS, CATHERINE CONDON,  
DAVID T. MEBERG, PAUL O'BRIEN  
and KEVIN O'CALLAGHAN,

Defendants.

Civil Action No. 12-cv-5168 (LBS)

ECF Case

**REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
DISMISS COUNTERCLAIMS BY  
DEFENDANTS MICHAEL J.  
FORDE AND MARY JANE FORDE**

Defendants Prudential Investment Management Services LLC and Prudential Bank & Trust, FSB (together, “Prudential”) filed and served a motion to dismiss Michael J. and Mary Jane Forde’s counterclaims on September 14, 2012. The Fordes did not file or serve any papers in opposition to the motion, which were due on September 28, 2012 pursuant to Local Rule 6.1(b). Prudential therefore requests that its unopposed motion be granted and that the Fordes’ counterclaims be dismissed in their entirety and with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) for the reasons set forth in Prudential’s motion and supporting papers. *See, e.g., St. Paul Fire & Marine Ins. Co. v.*

*Ayn Enters.*, No. 08-cv-465 (BSJ), 2010 U.S. Dist. LEXIS 39721, at \*9 (S.D.N.Y. Apr. 21, 2010) (granting motion to dismiss cross-claims because no opposition was filed).

Dated: New York, New York  
October 5, 2012

Respectfully Submitted,

**BRUNE & RICHARD LLP**

By: /s/ David Elbaum

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Matthew Popowsky  
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